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OCT 23 2006

Atty Dkt. No.: 10030636
USSN: 10/729,606

REMARKS

In view of the following remarks, the Examiner is requested to allow Claims 1-17, 19 and 31-37, the only claims pending and under examination in this application.

Claims 1-17 and 31 have been amended. Claim 1, 17 and 31 have been amended to indicate that the device is an assay device that includes a flexure or spring element that interacts with a clamping member such that when the clamping member is actuated a force is applied to the cover and base in a manner sufficient to produce a substantially uniform distance between an array assembly and backing element along the entire length of the cover and base when an array assembly and backing element are present in the device. Support for the amendment of Claims 1, 17 and 31 may be found throughout the specification and claims as originally filed. For instance, support may be found at paragraphs 118, 112, 107 and 92. Claims 2-16 have been amended to clarify the claim language. Additionally, Claim 17 has been amended to incorporate the elements of Claim 18. Consequently, Claim 18 has been cancelled. Claims 34-37 have been added. Support for new Claims 34-37 may be found at paragraph 107. Claims 25, 26, 28 and 29 have been cancelled. Accordingly, no new matter has been added by way of these amendments.

As no new matter has been added by way of these amendments, their entry is respectfully requested.

As an initial matter the Examiner is thanked for the telephonic interview conducted on October 17, 2006. During the interview the 35 U.S.C. § 112 and 35 U.S.C. § 102 rejections were discussed. The Examiner suggested amending the claims language so as to overcome the § 112 rejection. The Applicants have amended the claims accordingly. Additionally, the Examiner suggested that the § 102 rejection may be overcome by amending the claims to better define the structural elements of the assay device. The Applicants have amended the claims accordingly.

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Claim Rejections – 35 U.S.C. § 112, second paragraph

Claims 1-19 and 31-33 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 1-19 and 31-33 were rejected for allegedly lacking clarity. The Office asserts that it is unclear whether the Applicants intend to claim the "array assembly" and "backing element" as essential elements of the claims. The Applicants respectfully disagree. However, in order to expedite prosecution and advance the case to issuance, the Applicants have amended the rejected Claims. The Applicants contend that in view of the amendments to the claims this rejection may be withdrawn.

Claim Rejections – 35 U.S.C. § 102(b)

Claims 1-8, 14-19 and 31-33 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Freeman (USPN 5,958,760).

According to the MPEP, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Additionally, the identical invention must be shown in as complete detail as is contained in the claim. See MPEP 2131.

Claims 1, 17 and 31 have been amended. An element of the claims as amended is a flexure or spring element that interacts with a clamping member such that when the clamping member is actuated a force is applied to the cover and base in a manner sufficient to produce a substantially uniform distance between an array assembly and backing element along the entire length of the cover and base when the array assembly and backing element are present in said device.

Freeman, on the other hand, discloses the apparatus of Fig 13a (see below).

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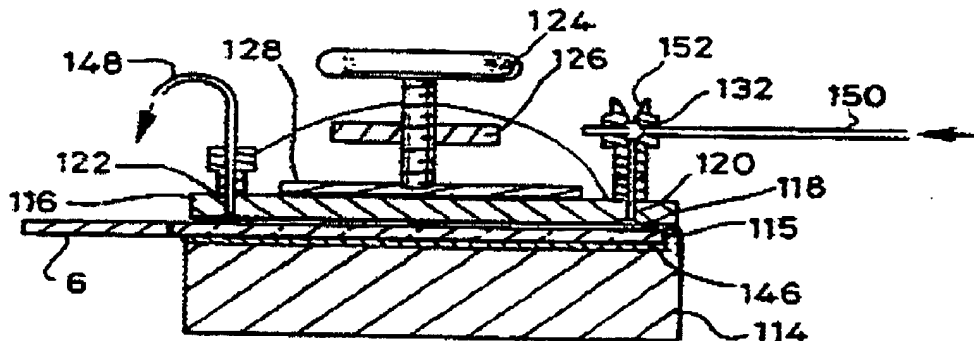


Fig. 13a

The apparatus of Fig 13a includes a support holding member 114 (e.g., a base), a clamping plate 128, a screw threaded clamping member 124 (e.g., a clamping member), a support retaining member 116 (e.g., "array assembly"), a support 6 (e.g., "backing element") and an engagement bar 126. According to the disclosure of Freeman: "the clamping plate 128 serves to spread the clamping force of the clamping member 124 over a greater area of the support retaining member 116. See column 11, lines 63-65.

However, although the clamping plate 128 functions to spread the clamping force over a greater area of the retaining member 116, there is no indication that the clamping plate 128 interacts with the clamping member 124 such that when the clamping member is actuated a force is applied to the retaining member 116 and support 6 or base 114 in a manner sufficient to produce a substantially uniform distance between the retaining member 116 and the support 6 or base 114 along the entire length of the retaining member and support or base.

In fact, as can be seen with reference to Fig. 13a, because the clamping plate only contacts the retaining member in a central portion of the retaining member, one of skill in the art would expect that a uniform distance between the retaining member and the support or base is not produced along the entire length of the retaining

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member and base. One of skill in the art would expect this because, as explained in the Applicant's specification at paragraph 91, the distance between an opposing base and cover will be smallest at the region nearest the area where a force is applied and greater at distances further away from this region.

Hence, given the configuration of the Freeman apparatus, one of skill in the art would expect that upon actuation of the clamping member, the clamping plate will produce a greater force on the central portion of the retaining member where the clamping plate contacts the retaining member and less of a force on the edges of the retaining member where the clamping plate does not contact the retaining member. Thus, the distance between the retaining member and the support and/or base will be smaller in the central portion and greater toward the edges.

Accordingly, in view of the above, Freeman does not teach a flexure or spring element that interacts with a clamping member such that when the clamping member is actuated a force is applied to the cover and base in a manner sufficient to produce a substantially uniform distance between an array assembly and backing element along the entire length of the cover and base when said array assembly and backing element are present in said device. Because Freeman fails to teach this element, Freeman fails to anticipate the rejected claims. Consequently, the Applicants respectfully request that the 35 U.S.C. § 102(b) of Claims 1-8, 14-19 and 31-33 be withdrawn.

Claims 1, 9-13, 14-19 and 31-33 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Shea (US Publication No 20030235906).

As set forth above, Claims 1, 17 and 31 have been amended. An element of the claims as amended is a flexure or spring element that interacts with a clamping member such that when the clamping member is actuated a force is applied to the cover and base in a manner sufficient to produce a substantially uniform distance between an array assembly and backing element along the entire length of the cover and base when said array assembly and backing element are present in said device.

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Shea, on the other hand, discloses the device of FIG. 7A.

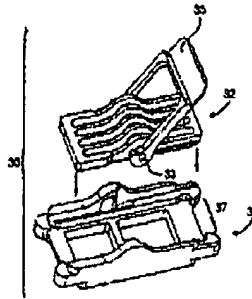


FIG. 7A

The Shea device includes base 34, cover 32 and clamping member 35. As can be seen with reference to FIG. 7A, the disclosed device does not include a flexure or spring element.

Accordingly, Shea fails to anticipate the claims because Shea fails to teach all the elements of the rejected claims, namely, a flexure or spring element. Therefore, the Applicants respectfully request the 35 U.S.C. § 102 (e) rejection of Claims 1, 9-13, 14-19 and 31-33 be withdrawn.

New Claims

New Claims 34-37 have been added. New Claims 34-37 ultimately depend from Claim 1 and incorporate all the elements recited therein. Accordingly, for the reasons stated herein above, new Claims 34-37 are patentable over the cited art.

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CONCLUSION

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone John Brady at (408) 553-3584.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-1078, order number 10030636.

Respectfully submitted,

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